

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 14, 16, 17, 20, 21, 23, and 24 are pending in the present application, Claims 14, 16, 17, 20, and 21 having been amended and Claims 15, 18, 19, 22, and 25-28 having been canceled by the present amendment without prejudice or disclaimer. Support for the amendments to Claims 14, 16, 17, 20, and 21 is found, for example, in Claims 18 and 22. Thus, no new matter is added.

In the outstanding Office Action, Claims 17-19 and 21-28 were rejected under 35 U.S.C. §101 as directed to non-statutory subject matter; Claims 14, 16, 17, 20, 21, 23-25, and 27-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saeki et al. (U.S. Patent No. 6,263,155, hereinafter Saeki) in view of Gotoh et al. (U.S. Patent No. 6,292,625, hereinafter Gotoh)¹; and Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/801,678; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-16 of copending Application No. 10/801,699; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/801,700; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/801,701; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-

¹ It is noted that the outstanding Office Action does not provide grounds of rejection for Claims 18, 19, 22, and 26.

17 of copending Application No. 10/801,835; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/801,862; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/801,863; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/801,865; Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as over Claims 14-17 of copending Application No. 10/801,866; and Claims 14-28 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 14-17 of copending Application No. 10/802,004.

As for the rejection of Claims 17 and 21 under 35 U.S.C. §101, that rejection is respectfully traversed. Claim 17 has been amended to recite the information recording/reproducing apparatus employs the control information to manage the video data or audio data. Claim 21 has been amended to recite the information recording/reproducing apparatus accesses said data area. Accordingly, it is respectfully requested that this rejection be withdrawn.

MPEP § 2106 discusses statutory subject matter in relation to data structures of a computer readable medium. Particularly, MPEP § 2106 provides,

a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Application No. 10/669,525
Reply to Office Action of November 2, 2005

Thus, based on the clear language of this section, Claims 17 and 21 (and their dependent claims) are statutory as they define a functionality of which is realized based on the interrelationship of the structure to the medium and recited hardware components.

Further, should the Examiner disagree with the above passage, MPEP § 2106 also states that,

Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

Applicants respectfully submit, as noted above, that the rejection under 35 U.S.C. §101 should be withdrawn. However, if the rejection under U.S.C. §101 is to be maintained, Applicants respectfully request that the Examiner provide an explanation of the rejection in view of the guidelines of MPEP §2106.

With respect to the rejection of Claim 17 as unpatentable over the combination of Saeki and Gotoh, Applicants respectfully submit that the amendment to Claim 17 overcomes this ground of rejection. Amended Claim 17, which now includes the subject matter of Claim 18, recites, *inter alia*, “a start address of the rewritable data area including said video or audio data is physically fixed at “030000h” in hexadecimal notation.”

Neither Saeki nor Gotoh describe or suggest “a start address of the rewritable data area including said video or audio data is physically fixed at “030000h” in hexadecimal notation.”

In view of the above-noted distinctions, Applicants respectfully submit that Claim 17 patentably distinguishes over Saeki and Gotoh, taken alone or in proper combination. Claims 14, 16, and 20 also recite “a start address of the rewritable data area including said video or audio data is physically fixed at “030000h” in hexadecimal notation.” Thus, Applicants respectfully submit that Claims 14, 16, and 20 patentably distinguish over Saeki and Gotoh, taken alone or in proper combination, for at least the reasons stated for Claim 17.

With respect to the rejection of Claim 21 as unpatentable over the combination of Saeki and Gotoh, Applicants respectfully submit that the amendment to Claim 21 overcomes this ground of rejection. Amended Claim 21, which now includes the subject matter of Claim 22, recites, *inter alia*, "said prescribed address is configured based on a unit including data of 2048 bytes."

Neither Saeki nor Gotoh describe or suggest "said prescribed address is configured based on a unit including data of 2048 bytes."

In view of the above-noted distinctions, Applicants respectfully submit that Claim 21 (and dependent Claims 23 and 24) patentably distinguishes over Saeki and Gotoh, taken alone or in proper combination.

Turning now to the provisional rejections based on non-statutory double patenting, Applicants respectfully submit that Claims 14-17 are patentably distinct from the claims of co-pending Application Nos. 10/801,678, 10/801,699, 10/801,700, 10/801,701, 10/801,835, 10/801,862, 10/801,863, 10/801,865, 10/801,866, and 10/802,004.

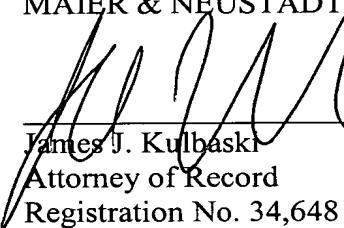
However, to expedite progress toward allowance, a Terminal Disclaimer is filed herewith. Thus, Applicants submit the provisional rejections of the claims are moot.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



James J. Kulbaski
Attorney of Record
Registration No. 34,648

Scott A. McKeown
Registration No. 42,866

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)